

Message Text

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TO AMEMBASSY BONN

INFO SECSTATE WASHDC 4028

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E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN--SENAT SUGGESTS AMENDMENT OF

BK/O

REF: A) BERLIN 1647; B) BONN 14708

1. SENAT HAS PASSED TO ALLIES LETTER FROM HEAD OF SENAT
CHANCELLERY LEGAL DEPARTMENT (DR. HEIDELMEYER) QUESTIONING
DRAFT BK/O. LETTER NOTES THAT INTENTION IS EXPRESSED IN
DRAFT BK/L TO RESERVE ALLIED RIGHT TO DEPRIVE OF EFFECT
DECISIONS TAKEN UNDER AMENDED 1953 LAW ON INNER-
GERMAN JUDICIAL COOPERATION IN CRIMINAL MATTERS IN EVENT
SUCH DECISIONS ARE NOT IN ACCORD WITH ALLIED ORDERS AND
DIRECTIVES. SENAT ARGUES THAT NUMBERED SUBPARA 2 OF BK/O
IN WHICH THIS DECISION IS TO BE REFLECTED IS FORMULATED
SO THAT FIRST SENTENCE CAN BE CONSIDERED TO HAVE
MEANING INDEPENDENT OF SECOND SENTENCE. SUCH INTERPRETA-
TION, SENAT ARGUES, "IS OBVIOUSLY NOT IN ACCORDANCE WITH
INTENTIONS OF KOMMANDATURA AND COULD LEAD TO DIFFICULTIES
OF INTERPRETATION AND LEGAL UNCERTAINTY WHICH SURELY ARE
NOT MEANT."

2. SENAT ACCORDINGLY SUGGESTS THREE ALTERNATIVE REVIEWS

OF BK/O:

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- A. DELETION OF FIRST SENTENCE OF SUBPARA 2 OF BK/O;
- B. SUBSTITUTION OF SECOND PARA OF DRAFT BK/L FOR SUBPARA 2 OF BK/O WITH DELETION OF WORD "CONSEQUENTLY";
- C. ADDITION OF PHRASE "IN THOSE CASES THE ALLIED KOMMANDATURA THEREFORE . . ." TO SECOND SENTENCE OF SUBPARA 2 OF BK/O.

3. COMMENT: SENAT CONCERN APPEARS TO BE THAT TWO SENTENCES OF SUBPARA 2 OF BK/O MAY BE READ AS SAYING INDEPENDENT THINGS: A) THAT DECIXCS TAKEN UNDER LAW ARE EFFECTIVE IN BERLIN ONLY TO EXTENT THEY ARE CONSISTENT WITH ALLIED ORDERS AND DIRECTIVES; AND B) THAT ALLIES RESERVE RIGHT TO TAKE WHATEVER ACTIONS THEY DEEM APPROPRIATE IN RELATION TO ANY DECISION TAKEN UNDER LAW. SENAT APPARENTLY FEELS THAT FIRST SENTENCE HAS IMPLICATION THAT, REGARDLESS OF WHETHER OR NOT ALLIES INTERVENE, THERE IS POSSIBILITY THAT DECISION TAKEN UNDER NEW LAW MAY NOT BE FULLY IN FORCE IN BERLIN AND THAT SECOND SENTENCE HAS IMPLICATION THAT ALLIES MAY CONSIDER IT NECESSARY TO INTERVENE IN SOME DECISIONS REGARDLESS OF WHETHER OR NOT THEY ARE IN ACCORDANCE WITH ALLIED ORDERS AND DIRECTIVES. WE ASSUME BONN GROUP WILL WISH TO CONSIDER MERITS OF SENAT SUGGESTIONS.KLEIN

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